IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 24TH AUGUST 2007 / 2ND BHADRA 1929

WP(C).No. 31222 of 2005(P)

EP.NO.571/2003 IN OS.960/1994 of II ADDL.SUB COURT,THRISSUR

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PETITIONER:

V.N.PARASHURAMAN, RETD. PEON, AGED 62
YEARS, VYSYAPATTU HOUSE, MADAKKATHARA P.O.,
VIA. MANNUTHHY, THRISSUR DISTRICT-680 656.

BY ADV. SRI.K.P.SARVOTHAMAN

RESPONDENTS:

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1. KSHEMA VILASAM KURIES CO.LTD.,
THRISSUR TOWN, REPRESENTED BY ITS MANAGER,
THRISSUR VILLAGE, THRISSUR TALUK.

2. C.N.BABU, S/O.SANKUVIRUTHIYIL NARAYANAN,
SANKUVIRUTHIYIL HOUSE, MAROTTICHAL P.O. PUTHUR,
PANCHAYATH, THRISSUR DISTRICT.

R1 BY ADV. SRI.JIMMY JOHN VELLANIKARAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF THE JUDGMENT DT.27.6.98 IN O.S.960/94 OF SUB COURT, THRISSUR.

EXT.P2 – TRUE COPY OF DECREE IN O.S.960/94 DT.27.6.98 OF SUB COURT, THRISSUR.

EXT.P3 – TRUE COPY OF THE SCHEDULE OF PROPERTY OF THE PETR. SOUGHT TO BE ATTACHED IN EP.571/03 IN O.S.960/94 ON SUB COURT, THRISSUR.

EXT.P4 – TRUE COPY OF PETITION FILED UNDER O.21 RULE 11 BY THE R1.

EXT.P5 – TRUE COPY OF CASE SUMMARY AND DISCHARGE RECORD DT.14.11.81 ISSUED FROM SREE CHITRA TIRUNAL MEDICAL CENTRE, TRIVANDRUM

EXT.P5(A) – TRUE COPY OF DO. ISSUED FROM SREE CHITRA TIRUNAL INSTITUTE, TRIVANDRUM DT.24.4.03.

EXT.P6 – TRUE COPY OF CERTIFICATE ISSUED FROM SREE CHITRA TIRUNAL INSTITUTE, TRIVANDRUM DT.9.6.04

EXT.P7 – TRUE COPY OF CERTIFICATE DT.24.5.04 ISSUED BY BRANCH MANAGER OF VELLANIKKARA SERVICE CO-OP. BANK LTD., THRISSUR.

EXT.P8 – TRUE COPY OF COUNTER AFFIDAVIT WITH PETITION IN EP.571/03 ON 17.10.05 BEFORE SUB COURT, THRISSUR.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.31222 OF 2005

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DATED THIS THE 24TH AUGUST, 2007

J U D G M E N T

The 1st respondent is served with notice. Notice to the 2nd respondent returned with the endorsement 'not known'. But, according to me, the 2nd respondent was only a co-judgment-debtor along with the petitioner before the execution court. The issue involved in this Writ Petition can be decided between the petitioner and the 1st respondent-decree-holder who appears through Advocate Mr.Jimmy John Vellanikkaran.

2. This Court became inclined to grant stay only on condition that the petitioner pays a sum of Rs.10,000/- to the decree-holder within six weeks from 8.11.2005. Mr.K.P.Sarvothaman, counsel for the petitioner submits that the above payment has been made.

3. The ground which is seen seriously raised in the Writ Petition is that the petitioner was only one of the sureties to the principal borrower and that the 1st respondent is sparing the other judgment-debtors who were co-sureties. If the 1st respondent proceeds against the other judgment-debtors in the case, it will be possible for the 1st respondent to recover the entire balance. So long as the petitioner concedes that he is also one of the judgment-debtors, this Court will

not be justified in exonerating the petitioner from the decree liability, sitting in this jurisdiction under Article 227 of the Constitution. However, on considerations of indulgence, I dispose of the Writ Petition issuing the following directions:-

The court below will verify whether the sum of Rs.10,000/- as ordered by this Court has been paid by the petitioner within the time stipulated by this Court. If on verification it is seen that payment has been made, the court below will issue appropriate directions to the 1st respondent to take effective coercive steps against the other judgment-debtors so that execution proceeds against them also. Coercive action, whether personal or against the property of the petitioner, will be kept in abeyance on condition that the petitioner pays every month commencing from 17.9.2007 at the rate of Rs.1500/- towards the decree-debt till such time as the entire decree-debt is discharged. It is however made clear that in the event of the petitioner defaulting payment of any of the instalments, he will forfeit the benefit which is granted to him under this judgment.

(PIUS C.KURIAKOSE, JUDGE)

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